

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.16069 of 2012

And

M.P.No.1 of 2012

D.Soundararajan

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Cuddalore,
Cuddalore District.

2. The Management,
Tamil Nadu State Transport Corporation,
Villupuram,
Villupuram District.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the entire records relating to award passed by the 1st respondent in I.D.No.69 of 2009, dated 18.01.2011 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all attendant benefits and monetary benefits together with continuity of service.

For Petitioner : Mr.C.Prakasam

For Respondents : R1 - Labour Court
Mr.Paramasivadoss for R2

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O R D E R

The petitioner has challenged the award of the Labour Court in I.D.No.69 of 2009, dated 18.01.2011.

2.The petitioner raised dispute before the Labour Court alleging that he has been dismissed orally, denied employment

from the respondent Management and he should be reinstated with backwages and attendant benefits on the ground that the petitioner has completed 240 days in a calendar year.

3.The respondent resisted the dispute by contending that the petitioner was appointed as Driver in the year 2001 temporarily for driving the bus for summer vacation and after summer vacation, he was relieved from duty. Thereafter, the petitioner attended interview conducted by the Management, but, was not selected by the selection committee and after eight years, the petitioner has raised this dispute before the Labour Court. The petitioner examined himself as W.W1 and marked 12 documents as Ex.W1 to Ex.W12. On the side of the respondent Management, a Senior Assistant was examined as M.W1. However, no documents were marked.

4.The Labour Court framed the question as to whether the petitioner is entitled for reinstatement for continuity of service, backwages and other attendant benefits?

5.The case of the petitioner vested upon the documents namely, Ex.W2 - an identity card, a deposit receipt - Ex.W3, a letter of recommendation that the petitioner has satisfactorily completed training - Ex.W4, the HSD issue slips - Ex.W5 series, the registration card - Ex.W6, trip sheet - Ex.W7 and Ex.W8, and Ex.W9 to Ex.W11 - were the notices issued calling for the petitioner to attend the interview. With these documents coupled with the oral evidence, the petitioner contended that he has completed 240 days in a year and therefore, he should be permanently absorbed into the service of the respondent.

6.The management took a stand that though the services of the petitioner were engaged, it was only for operating summer specials and he has not completed 240 days of service in one calendar year.

7.The Labour Court on examining the evidence of the petitioner, W.W1, noted that during cross examination, the petitioner admitted that he attended the duty as Driver for summer special operation for the months of April and May in the year 2001 and after the summer special season was over, he was stopped from work. Though the petitioner in the witness box admitted that he had worked for six months, the petitioner was not able to prove before the Labour Court and substantiate his claim nor rebut the stand taken by the Management that the petitioner services were used only for a limited period.

Therefore, the Labour Court after taking into consideration the decision of the Hon'ble Supreme Court in the case of Sur Enamel and Stamping Works Limited Vs. Their Workmen (1963) 2LLJ 367, 370 (SC) per Das Gupta J., Union of India through Divisional Railway Manager, Mumbai Vs. Jaioraj N.Shetty 2003 L.L.R.1142 and other decisions held that the petitioner has not established that he was in continuous service for a period of 240 days in a year.

8.That apart, the delay of eight years has not been explained by the petitioner since according to the petitioner, he was engaged for a period of six months in the year 2001, whereas, the dispute was raised only in the year 2009. This is also fatal to the case of the petitioner. Thus the award of the Labour Court has been rendered considering the oral and documentary evidence and the petitioner has not been able to establish any perversity in the approach of the Labour Court and in such event, this Court will not examine the correctness of the impugned award as if acting as a second Appellate Court. As long as there is no error apparent on the face of record either on law or on facts, this Court will not re-appreciate the evidence which was placed before the Labour Court.

9.For all the above reasons, the petitioner has not made out any case which warrants interference. Hence, the writ petition fails and the same is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Presiding Officer,
Labour Court,
Cuddalore,
Cuddalore District.

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2. The Management,
Tamil Nadu State Transport Corporation,
Villupuram,
Villupuram District.

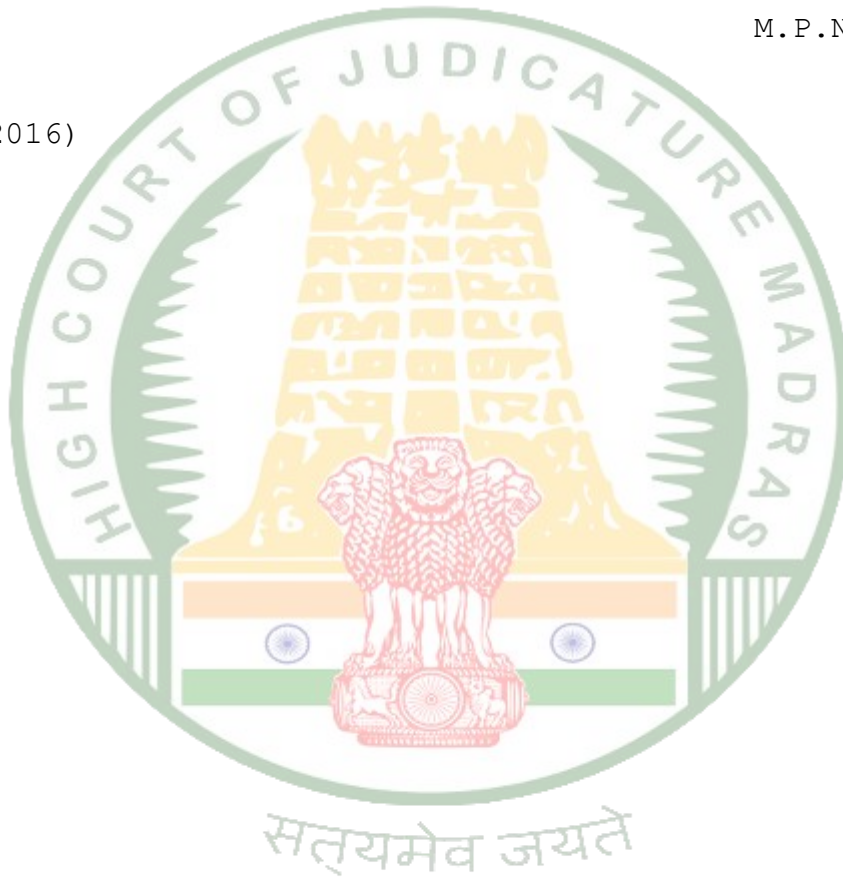
+1cc to Mr.C.Prakasam, Advocate, S.R.No.68938

+1cc to Mr.Paramasivadoss, Advocate, S.R.No.69331

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and

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VGI (CO)
CA(19/01/2016)



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